

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO.74 OF 2005
IN
WRIT PETITION NO.849 OF 1995

Sabri Mosque Trust & Anr. .. Petitioners.

Vs.

The State of Maharashtra & Ors. .. Respondents

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Shri R.S.Tripathi for the petitioners.

Mrs.S.M.Dandekar for the respondent Nos.1 and 2.

Shri Vinod Mahadi for the respondent No.3.

None present for respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 21ST OCTOBER, 2005.

1. On oral motion by the learned advocate for the petitioners, the petitioners are permitted to delete the name of respondent No.4. Amendment to be carried out forthwith.

2. Heard. It is the case of the petitioners that inspite of the fact that the records apparently disclose that the premises were not being used for the purpose for which they were requisitioned in the year

1953 in exercise of powers under the Bombay Land Requisition Act, 1948, the Court proceeded to dispose of the matter on assumption that the premises are being used for the same purpose till this date.

3. Upon hearing the learned advocates for the parties and on perusal of the record, it is seen that in the order dated 4th October, 2005, it is clearly observed that "indeed undisputedly, the premises in question were requisitioned under the Bombay Land Requisition Act, 1948 with effect from 1-4-1953 for public purpose i.e. for the use of the Government grain shops and it is accordingly being used till this date."

4. At the same time, the affidavit-in-reply, which was filed by the Government, in the paragraph 3 thereof, states as under:-

"I say that the above requisitioned premises had been allotted/transferred to the BMC for Urdu School on 30/11/84. The said school was conducting I to IV Std. classes at monthly compensation for the said requisitioned premises which had been paid by the BMC., Education Department."

Obviously, the finding which was arrived at in the order dated 4th October, 2005 that the premises are being used till this date for the same purpose for which they were requisitioned was totally contrary to the record. As the said record was not brought to the notice of this Court, obviously, the Court proceeded to dispose of the matter on some assumption which discloses an error apparent on the face of record, and therefore, the judgment needs to be reviewed and for that purpose to be set aside and the Writ Petition No.849 of 1995 needs to be restored to the board to be heard afresh.

5. Accordingly, the order dated 4th October, 2005 is hereby recalled. The writ petition No.849 of 1995 is restored to the board and the same to be listed for final hearing afresh. The review petition is disposed of in above terms. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)